

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SEIU HEALTHCARE 1199NW,

Plaintiff,

v.

PROVIDENCE HEALTH & SERVICES,

Defendant.

Case No. C19-5628 BHS-TLF

ORDER GRANTING MOTION FOR
EXTENSION OF TIME AND
DENYING MOTION TO COMPEL

This matter comes before the Court on plaintiff's motions for extension of time to complete discovery (Dkt. 47) and motion to compel production (Dkt. 49). The parties have briefed the issues, and the Court held oral argument. Dkt. 47, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64. The Court GRANTS plaintiff a limited extension of time to complete discovery and DENIES plaintiff's motion to compel production.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff brings this action alleging that defendant breached its contractual duties under a Collective Bargaining Agreement ("CBA") and Letter of Understanding ("LOU"). Dkt. 18. The parties agree that plaintiff served its first set of interrogatories and requests for production on February 7, 2020. Dkt. 47 at 2, Dkt. 51 at 3. The Court has granted four stipulated extensions of pretrial deadlines. Dkt. 33, 34, 39, 40, 43, 44, 45, 46.

The discovery cut-off was November 30, 2020. Dkt. 46. On November 30, 2020, plaintiff filed a motion seeking an extension of time to complete discovery. Dkt. 47. The

1 parties indicate that they met and conferred on November 23, 2020 regarding discovery
2 issues and defendant indicated it was working on producing responsive documents.
3 Dkt. 47 at 4, Dkt. 51 at 6-7. Defendant rejected plaintiff's suggestion to extend the
4 discovery deadline to December 4, 2020; instead, they agreed to try to produce
5 documents on November 25th and 27th. Dkt. 47 at 4, Dkt. 51 at 6-7.

6 Defendant produced documents on November 25th and on November 27th.¹ The
7 parties subsequently met and conferred, and plaintiff proposed extending discovery
8 deadlines to address issues related to the supplemental documents. Dkt. 47 at 5, Dkt.
9 51 at 7-8. Defendant declined plaintiff's request for a stipulated extension and plaintiff
10 filed the pending motion for extension of time. Dkt. 47 at 5-6, Dkt. 51 at 8. Plaintiff seeks
11 an extension of time to conduct further discovery and depositions. Dkt. 47 at 6-7.

12 On December 4, 2020, plaintiff filed a motion requesting that the Court compel
13 defendant to produce documents responsive to a supplemental request for production
14 seeking: "documents that refer or relate to Sound employee surveys, including the
15 survey questions and employee answers, regarding the subject matter of this action, or
16 this action itself." Dkt. 49 at 1. Plaintiff contends that defendant produced documents
17 referencing employee/caregiver surveys conducted by defendant, including emails
18 discussing a 2019 "Caregiver Experience Survey." *Id.* at 4-5. Plaintiff's alleges that
19 defendant objected to the request for production and despite meeting and conferring,
20 the parties have not reached an agreement regarding this request for production. Dkt.
21 49 at 5-8.

22 ¹ Plaintiff states that defendant produced 880 pages of documents on November 25th, 2020 and 1,045
23 pages of documents on November 27, 2020 (1,925 pages in total). Dkt. 47 at 5. Defendant states that it
24 produced 519 supplemental documents on November 25, 2020 and 705 supplemental documents on
25 November 27, 2020. Dkt. 51 at 7.

DISCUSSION

A. Motion for Extension of Time

Pursuant to Fed. R. Civ. P. 16(b)(4) a scheduling order may only be modified for good cause and with the Court's consent. "Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party seeking the amendment." *Johnson v. Mammoth Recreations*, 975 F.2d 604, 609 (9th Cir. 1992). The Court may modify the pretrial schedule if the moving party could not reasonably meet the deadlines despite the party's diligence. *Id.* While the Court may consider whether the opposing party will be prejudiced by the extension of time, the focus of the inquiry is whether the moving party was diligent. *Johnson*, 975 F.2d at 609. Further, mere failure to complete discovery within the time allowed does not constitute good cause for an extension. LCR 16(b)(6).

Defendant produced hundreds of supplemental documents on November 25th and even more documents on November 27th. Dkt. 47, 51. Considering the number of documents defendant produced and the proximity of the production to the Thanksgiving holiday, it does not appear that plaintiff could reasonably review the November 25th and 27th productions and conduct additional discovery or motion practice before the November 30th deadline. Accordingly, the Court finds good cause to grant an extension of the discovery deadline for narrowly tailored additional discovery.

The Court grants a 45-day extension of time to complete discovery. Plaintiff may conduct additional discovery regarding new evidence produced on November 25th and November 27th that was not previously produced. Additionally, plaintiff may conduct a one-hour deposition of Carlos Alaniz, the new Sound Hospice Director, regarding new information arising from the November 25th and 27th document productions.

1 B. Motion to Compel

2 Pursuant to Fed. R. Civ. P. 37(a)(3)(B)(iv) a party may move for an order
3 compelling production when a party fails to produce documents or fails to permit
4 inspection as required by Rule 34. Rule 34 allows a party to serve on another party a
5 request for production within the scope of Rule 26(b). Fed. R. Civ. P. 34(a). In turn, Fed.
6 R. Civ. P 26(b)(1) states:

7 Unless otherwise limited by court order, the scope of discovery is as
8 follows: Parties may obtain discovery regarding any nonprivileged matter
9 that is relevant to any party's claim or defense and proportional to the
10 needs of the case, considering the importance of the issues at stake in the
11 action, and the amount in controversy, the parties' relative access to
relevant information, the parties' resources, the importance of the
discovery in resolving the issues, and whether the burden or expense of
the proposed discovery outweighs its likely benefit. ...

12 Plaintiff contends that the requested surveys are relevant because they relate to
13 plaintiff's allegations that defendant failed to make good faith efforts to adjust daily
14 patient assignments for Union-represented employees. Dkt. 49 at 9. Plaintiff alleges that
15 the survey evidence may show or lead to evidence showing the extent to which
16 defendant attempted to ascertain the efficacy of defendant's approach to staffing and
17 adjustments to patient assignment, as well as defendant's knowledge of employee's
18 opinions on whether defendant's approach to staffing was working. Dkt. 49 at 9-10.

19 Plaintiff has attached a May 2019 email sent from the Director of Sound Home
20 Health to Home Health clinical managers with anonymous excerpts from survey
21 responses purportedly relevant to this litigation. Dkt. 49-2 at ¶ 10, Dkt. 60-1 at 216.
22 Defendant asserts that the requested surveys are annual surveys that Providence
23 Health and Services provides to every eligible employee throughout the Providence
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1 Health and Services organization. Dkt. 56 at 7. Defendant also states that it would be
2 extremely burdensome, if not impossible, to determine which surveys came from Union-
3 represented employees, because the surveys are anonymous and not all employees
4 are members of the Union. Dkt. 56 at 7-8. During oral argument, defendant also
5 indicated that the surveys were conducted by a third party. Dkt. 64.

6 Considering the scope and nature of the surveys requested, the burden of
7 producing responsive surveys outweighs their likely benefit. The scope of plaintiff's
8 document request includes surveys of all eligible employees working for Providence
9 Health & Services, not just Providence SoundHomeCare and Hospice, over a three-
10 year period. The surveys are anonymous and conducted by a third-party service
11 provider. Accordingly, it appears that it would be unduly burdensome for defendant to
12 identify which survey responses were provided by Union-represented employees.

13 Based on the foregoing, the Court denies plaintiff's motion to compel production.

14 CONCLUSION

15 For the reasons discussed in this Order, the Court grants plaintiff's motion for
16 extension of time (Dkt 47) and denies plaintiff's motion to compel production (Dkt. 49).
17 The Clerk of the Court is directed to send a copy of this Order to counsel for the parties
18 in this action.

19 Dated this 22nd day of December, 2020.

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23 Theresa L. Fricke
United States Magistrate Judge